

(5) Any asset not in the branch's actual possession unless the branch holds title to such asset and the branch maintains records sufficient to enable independent verification of the branch's ownership of the asset, as determined at the most recent state or federal examination;

(6) Any intangible asset.

(c) A foreign bank which has more than one insured branch in a state may treat all of its insured branches in the same state as one entity for purposes of compliance with paragraph (a) of this section, and shall designate one branch to be responsible for maintaining the records of the branches' compliance with this section.

(d) The average book value of the branch's liabilities for a quarter shall be, at the branch's option, either an average of the balances as of the close of business for each day of the quarter or an average of the balances as of the close of business on each Wednesday during the quarter. Quarters end on March 31, June 30, September 30, and December 31 of any given year. For days on which the branch is closed, balances from the previous business day are to be used. Calculations of the average book value of the branch's liabilities for a quarter shall be retained by the branch until the next Federal examination.

[54 FR 14069, Apr. 7, 1989, as amended at 60 FR 31384, June 15, 1995]

§ 346.21 [Reserved]

§ 346.22 Deductions from the assessment base.

An insured branch may deduct from its assessment base deposits in the insured branch to the credit of the foreign bank or any office, branch or agency of and any wholly owned subsidiary of the foreign bank.

or upon request of the branch, by the regional director of the FDIC region in which the branch is located.

§§ 346.23—346.100 [Reserved]

Subpart D—Applications Seeking Approval for Insured State Branches To Conduct Activities Not Permissible for Federal Branches

§ 346.101 Applications.

(a) *Scope.* A foreign bank operating an insured state branch which desires to engage in or continue to engage in any type of activity that is not permissible for a federal branch, pursuant to the National Bank Act (12 U.S.C. 21 *et seq.*) or any other federal statute, regulation, official bulletin or circular, or order or interpretation issued in writing by the Office of the Comptroller of the Currency, or which is rendered impermissible due to a subsequent change in statute, regulation, official bulletin or circular, written order or interpretation, or decision of a court of competent jurisdiction (each an impermissible activity), shall file a written application for permission to conduct such activity with the FDIC pursuant to this section. An applicant may submit to the FDIC a copy of its application to the Board of Governors of the Federal Reserve System (Board of Governors), provided that such application contains the information described in paragraph (d) of this section.

(b) *Exceptions.* A foreign bank operating an insured state branch which would otherwise be required to submit an application pursuant to paragraph (a) of this section will not be required to submit such an application if the activity it desires to engage in or continue to engage in has been determined by the FDIC not to present a significant risk to the affected deposit insurance fund pursuant to 12 CFR Part 362, "Activities and Investments of Insured State Banks".

(c) *Agency activities.* A foreign bank operating an insured state branch which would otherwise be required to submit an application pursuant to paragraph (a) of this section will not be required to submit such an application

if it desires to engage in or continue to engage in an activity conducted as agent which would be a permissible agency activity for a state-chartered bank located in the state in which the state-licensed insured branch of the foreign bank is located and is also permissible for a state-licensed branch of a foreign bank located in that state; provided, however, that the agency activity must be permissible pursuant to any other applicable federal law or regulation.

(d) *Content of application.* An application submitted pursuant to paragraph (a) of this section shall be in letter form and shall contain the following information:

(1) A brief description of the activity, including the manner in which it will be conducted and an estimate of the expected dollar volume associated with the activity;

(2) An analysis of the impact of the proposed activity on the condition of the United States operations of the foreign bank in general and of the branch in particular, including a copy, if available, of any feasibility study, management plan, financial projections, business plan, or similar document concerning the conduct of the activity;

(3) A resolution by the applicant's board of directors or, if a resolution is not required pursuant to the applicant's organizational documents, evidence of approval by senior management authorizing the conduct of such activity and the filing of this application;

(4) A statement by the applicant of whether or not it is in compliance with §§ 346.19 and 346.20, Pledge of Assets and Asset Maintenance, respectively;

(5) A statement by the applicant that it has complied with all requirements of the Board of Governors concerning applications to conduct the activity in question and the status of such application, including a copy of the Board of Governors' disposition of such application, if applicable;

(6) A statement of why the activity will pose no significant risk to the deposit insurance fund; and

(7) Any other information which the regional director deems appropriate.

(e) *Application procedures.* Applications pursuant to this section shall be

filed with the Regional Director of the Division of Supervision for the region in which the insured state branch is located. An application shall not be deemed complete until it contains all the information requested by the Regional Director and has been accepted. Approval of such an application may be conditioned on the applicant's agreement to conduct the activity subject to specific limitations, such as but not limited to the pledging of assets in excess of the requirements of § 346.19 and/or the maintenance of eligible assets in excess of the requirements of § 346.20. In the case of an application to conduct an activity, as opposed to an application to continue to conduct an activity, the insured branch shall not commence the activity until it has been approved in writing by the FDIC pursuant to this part and the Board of Governors, and any and all conditions imposed in such approvals have been satisfied.

(f) *Divestiture or cessation.* (1) If an application for permission to continue to conduct an activity is not approved by the FDIC or the Board of Governors, the applicant shall submit a detailed written plan of divestiture or cessation of the activity to the Regional Director of the Division of Supervision for the region where the insured branch is located within 60 days of the disapproval. The divestiture or cessation plan shall describe in detail the manner in which the applicant will divest itself of or cease the activity in question and shall include a projected timetable describing how long the divestiture or cessation is expected to take. Divestitures or cessations shall be completed within one year from the date of the disapproval, or within such shorter period of time as the Corporation shall direct.

(2) A foreign bank operating an insured state branch which elects not to apply to the FDIC for permission to continue to conduct an impermissible activity shall submit a written plan of divestiture or cessation, in conformance with paragraph (f)(1) of this section, within 60 days of January 1, 1995, or of any change in statute, regulation, official bulletin or circular, written order or interpretation, or decision of a court of competent jurisdiction rendering such activity impermissible.

(g) *Delegation of authority.* Authority is hereby delegated to the Director of the Division of Supervision and, when confirmed in writing by the Director, to an associate director, or to the appropriate regional director or deputy regional director, to approve plans of divestiture and cessation submitted pursuant to paragraph (f) of this section.

[59 FR 60706, Nov. 28, 1994, as amended at 60 FR 31384, June 15, 1995]

APPENDIX A TO PART 346—[RESERVED]

PART 347—FOREIGN ACTIVITIES OF INSURED STATE NONMEMBER BANKS

Sec.

347.1 Authority and scope.

347.2 Definitions.

347.3 Foreign branches.

347.4 Acquisition and holding of stock in foreign banks or other financial entities.

347.5 Loans or extensions of credit to foreign banks or other financial entities.

347.6 Conditions.

AUTHORITY: Secs. 3(o), 18(d), and (18)(I), Federal Deposit Insurance Act, as amended by sec. 301, Pub. L. 95-630, 92 Stat. 3641 (12 U.S.C. 1813(o), 1828(d), 1828(I)).

SOURCE: 44 FR 25195, Apr. 30, 1979, unless otherwise noted.

§ 347.1 Authority and scope.

Under sections 3(o), 18(d) and 18(I) of the Federal Deposit Insurance Act, as amended by section 301, Pub. L. No. 95-630, 92 Stat. 3641 (12 U.S.C. 1813(o), 1828(d), 1828(I)), the Federal Deposit Insurance Corporation (the *Corporation*) prescribes the following regulation relating to: (a) Foreign branches of insured State nonmember banks, (b) the acquisition and holding of stock in foreign banks and other financial entities, and (c) loans or extensions of credit to or for the account of such foreign banks or other financial entities.

§ 347.2 Definitions.

For the purposes of this part:

(a) *Foreign branch* means any office or place of business of an insured State nonmember bank located outside the United States, its territories, Puerto Rico, Guam, American Samoa, or the Virgin Islands, at which banking oper-

ations (excluding representative offices solely concerned with new business development or public relations) are conducted.

(b) *Foreign country* means any foreign nation or colony, dependency, or possession thereof.

(c) *Foreign bank* means a bank organized under the law of a foreign country or any dependency or insular possession of the United States which is principally engaged in a commercial banking business and not engaged, directly or indirectly, in any activity in the United States except as in the judgment of the Federal Deposit Insurance Corporation, shall be incidental to the international or foreign business of such foreign bank.

(d) *Other financial entity* means a foreign institution other than a foreign bank which is: (1) Organized under the law of a foreign country or any dependency or insular possession of the United States, (2) not engaged, directly or indirectly, in any activity in the United States except as is incidental to its foreign business, and (3) engaged solely in the business of holding the shares of foreign banks, performing nominee, fiduciary, or other banking services incidental to the activities of a foreign branch or banking affiliate of an insured State nonmember bank, or performing other financial activities approved by the Corporation as being consistent with this part.

§ 347.3 Foreign branches.

(a) *Establishing, moving, or closing foreign branches.* A foreign branch may not be established, operated, or relocated by an insured State nonmember bank without the prior written consent of the Corporation. This consent may be obtained through the application procedures set forth under part 303. For all foreign branches and relocations thereof, the application shall contain information on the exact location of the facility and on the involvement of insiders as such involvement is specified in § 303.2, as well as the name and address of the newspaper in which the notice required by § 303.14(b)(1) is published and the date of that publication. At the time of the closing of a foreign branch, the insured State nonmember bank shall by letter advise the regional